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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 334

UNITED STATES OF AMERICA,
Appellant,

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., A Corporation; et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES, SHORELINE COOPERATIVE APARTMENTS, INC., A Corporation; J. M. NICHOLSON; NATHAN SUCHERMAN; MILTON TINSLEY; FRANK FERRARO; HELEN FERRARO; JOHN J. CHALMERS; SAMUEL SILVERMAN; MAURICE LIPKIN; CHARLES E. KOCH; CHARLES H. BRANDT; JEROME A. CUTLER; HARRY TARLER; EUGENE B. FEINGOLD and HERBERT S. KOHN.

SUMMARY OF ARGUMENT.

I.

Section 204 (j) of the Housing and Rent Act of 1949 is invalid and unconstitutional because:

A. It contains a illegal delegation of legislative powers by Congress:

1. To the Housing Expediter.
2. To various local boards.
3. To the governors of all states, territories and possessions of the United States.
4. To the legislatures of the various states, territories and possessions of the United States.
5. To the governing bodies of each and every incorporated city, town and village in the United States.

B. It contains a illegal delegation of legislative powers by Congress because the standards set out for exercise of legislative power by the above mentioned persons and governmental units are vague and general and depend upon the meanings ascribed by said persons and governmental units to the following phrases:

1. Sufficient construction (Section 204 (e)).
2. Otherwise reasonably met (Section 204 (e)).
3. Creation of additional rental units by conversion (Section 204 (c)).
4. Adequately provided (Section 204 (j) (i)).
5. Specifically expressed its intent (Section 204 (j) (1)).
6. No longer necessary (Section 204 (j) (2)).
7. Such a shortage of accommodations as to require rent control no longer exists (Section 204 (j) (3)).

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II.

Section 209 of the Housing and Rent Act of 1949 is unconstitutional and invalid because it contains too broad a delegation of legislative power from Congress to the Housing Expediter without sufficient delineation of the limits of said power.

III.

The unconstitutionality of either or both of Sections 204 (j) and 209 affects the entire Housing and Rent Act of 1949 and makes the entire statute invalid. The statute cannot exist without Section 209 and the intent of Congress to adopt the provisions of the Act only on condition that Section 204 (j) be included therein is manifest and unescapable. The clear intention of Congress overcomes any presumption of severability based upon Section 303.

ARGUMENT.

I.

SECTION 204 (j) OF THE HOUSING AND RENT ACT OF 1949 IS UNCONSTITUTIONAL.

A. The Standards Contained in Section 204 (j) are Inadequate. The Delegation of Legislative Authority is Complete.

Appellant first contends that the language of Section 204 (j) sets up a standard which is sufficiently definite. This argument is based upon comparison of several words contained in Section 204 (j) with several of the words selected from other statutes heretofore passed upon by this Court (Petitioner's Brief, pages 15 to 17). It is submitted that a more complete comparison is required to constitute a valid basis for argument. In each of the cases thus cited by appellant, there is delegation of authority to an official or to an administrative body couched in language which this Court held to constitute a sufficiently definite delineation of the granted power. Conceding, of course, the soundness of these decisions, are they applicable to this portion of the argument?

By Section 204 (j) Congress has delegated legislative authority to decontrol to the following classes or types of persons; said authority to be exercised upon conditions hereinafter noted:

1. To the respective governors of every state, territory, and possession of the United States; such authority to be exercised:

A. When the state has "adequately provided for the establishment and maintenance of maximum rents"; or

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B. When the state "has specifically expressed its intent that state rent control shall be in lieu of federal rent control".

2. To the legislature of every state, territory or possession of the United States which shall by law declare that Federal rent control "is no longer necessary" in its area or any part thereof.

3. To the "governing body" of each and every incorporated city, town or village in the United States which shall make a "finding" as a result of "a public hearing" conducted by it "that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village".

These delegations of power to decontrol are in addition to the authority granted by the Act to the Housing Expediter to decontrol any area or portion thereof if in his judgment the need for control no longer exists and in addition to the duty vested in the Expediter to decontrol luxury housing accommodations if in his judgment such action would result in creation of additional housing units by conversion (Section 204 (c); Petitioner's Brief, page 30).

Still a further delegation appears in those provisions of the Act which vest in Local Advisory Boards power to decontrol the area of their jurisdiction or any part thereof if in the judgment of the Board the need for control no longer exists due to sufficient construction of new housing or if the demand for rental housing accommodations has been otherwise reasonable met (Section 204 (e); Petitioner's Brief, page 30).

As the District Court pointed out in its opinion, each of these delegations of power is broad, loose, lax and indefinite (R. 12, 13). This type of massive and complete delegation of legislative power to so many different per-

sons to be exercised under so many varying circumstances is far different from the type of delegation approved by this Court in any of the cases cited by plaintiff.

In each and every one of the cases cited in Petitioner's Brief, the authority is delegated either to a single administrative official (*Lichter* v. *United States*, 334 U. S. 742; *Woods* v. *Miller Co.*, 333 U. S. 138; *Tagg Bros.* v. *United States*, 280 U. S. 420 and *United States* v. *Chemical Foundation*, 272 U. S. 1) or to a duly constituted administrative body (*American Power & Light Co.* v. *S. E. C.*, 329 U. S. 90; *National Broadcasting Co.* v. *United States*, 319 U. S. 190; *Federal Power Commission* v. *Hope Gas Co.*, 302 U. S. 591; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381; *Radio Commission* v. *Nelson Bros.*, 289 U. S. 266; *New York Securities Corp.* v. *United States*, 287 U. S. 12 and *Chesapeake & Ohio Ry.* v. *United States*, 283 U. S. 35).

In each of these cases, there is a singly carefully drafted grant of power to the official or commission. Usually the words employed in delineating the power have a well defined meaning (*Lichter* v. *United States*, 334 U. S. 742, 786). The delegation of power under such circumstances is not a proper subject of comparison to the statute here involved.

Furthermore, in every case thus cited by appellant, there is provision for judicial review of the decision or order of the official or administrative body to which power has been delegated. In the statute at bar, there is no right of review from the determinations of fact to be made by governors, legislatures or governing bodies of cities, towns or villages. The Housing Expediter must approve in ministerial fashion the desire for decontrol expressed by these governmental agencies.

Situations where power is delegated to a single responsible office holder appointed under Congressional super-

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vision or to a Commission subject to judicial review are vastly different from a delegation of complete power to governors, legislatures and governing bodies of cities and villages. Admittedly, complex modern problems require delegation by Congress. Admittedly, this Court has sanctioned delegation to duly constituted Commissions or Administrators. But, appellant has cited no case in any manner comparable to the case at bar in which there is complete delegation of legislative power to so many different types of nominees to be exercised under such varying circumstances.

The exercise of the delegations of power made by this statute depend upon the meaning of the following words or phrases:

1. Sufficient construction (Section 204 (e)).
2. Otherwise reasonably met (Section 204 (e)).
3. Creation of additional rental units by conversion (Section 204 (c)).
4. Adequately provided (Section 204 (j) (1)).
5. Specifically expressed its intent (Section 204 (j) (1)).
6 No. longer necessary (Section 204 (j) (2)).
7. Such a shortage of accommodations as to require rent control no longer exists (Section 204 (j) (3)).

And, to make the vice of this statute more apparent, the meanings of these seven phrases are to be determined not by one single Commission or authority but by:

a. The Housing Expediter.
b. The various local boards.
c. The governor of any state, (territory or possession of the United States).
d. The legislature of any state.
e. The governing body of any incorporated city, town or village.

It is therefore submitted that cases involving one delegation of power to a single board or official do not apply here. Delegation of power under this Act is absolute and complete and subject to no rule or reason.

The decisions of this Court most applicable to this situation are *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495 and *Panama Refining Co.* v. *Ryan,* 293 U. S. 388. The last named case is of special significance. This Court held unconstitutional Section 9 c of the National Industrial Recovery Act. The statute authorized the President of the United States to prohibit transportation in interstate and foreign commerce of petroleum in execss of the amount permitted to be produced or withdrawn from storage by any state law or by any valid regulation promulgated by a duly authorized state agency (293 U. S. 414, 415). The statute in the case at bar goes much beyond that in the case of *Panama Refining Co.* v. *Ryan.* There, the statute directed the President to act in accordance with State laws or regulations. Here, the discretion and power to decontrol is vested in governors, in legislatures and even in governing bodies of cities and villages. If such delegation is upheld as proper, the constitutional doctrine of separation of governmental powers is a nullity.

(B) There is a Complete Delegation of Legislative Power in this Statute which Invalidates it.

In this portion of the argument, appellant takes the position that the statute in question is a simple delegation of power concerning details by Congress to the states and that as such the statute is constitutional. Appellant seeks to analyze this statute into a simple use of state officials for federal purposes. An examination of the cited authorities is required.

To begin with, appellant cites cases in which federal courts are required by Act of Congress to proceed in accordance with state or local law. Such instances are *Wayman* v. *Southard*, 10 Wheat. 1 and *Amy* v. *Watertown*, 130 U. S. 301. The lack of analogy between these cases and the situation at bar is readily apparent. If Congress were to provide that the governor of any state could by proclamation vest in the courts of that state all of the jurisdiction presently reserved to the United States District Courts, then the situation might be comparable to the case at bar. Or, if the legislature of any state was authorized by Congress to divest the federal courts within its boundaries of all power and to deliver complete jurisdiction in federal matters to the state courts, then also the situation would be similar to the case at bar.

In the case of *Wayman* v. *Southard*, 10 Wheat. 1 Chief Justice Marshall was careful to point out that the statute there under consideration merely required federal courts to give effect to varying methods of legal procedure in the several states. The Chief Justice pointed out, however, (p. 46):

> "The state assemblies do not constitute a legislative body for the union. They possess no portion of that legislative power which the Constitution vests in Congress, and cannot receive it by delegation."

The next type of situation cited by appellant is concerned with provisions of the bankruptcy law which recognized state law in various details, such as exemptions granted to the bankrupt (Petitioner's Brief 19, 20, citing *Hanover National Bank* v. *Moyses*, 186 U. S. 181). Again, there is utter lack of analogy to the situation at bar. The case might be comparable if Congress had provided that any state might by proclamation of its governor or action by its legislature remove itself from the provisions of the

federal bankruptcy law if it had established a sound and adequate bankruptcy system of its own. Or, the comparison to the case at bar might be justified if Congress had provided that the governing body of any incorporated city, town or village might similarly exempt its inhabitants from federal bankruptcy law upon adoption of its own adequate bankruptcy system. In the cited case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, at page 190 of the Opinion, this Court pointed out that the system of bankruptcy law was general and uniform throughout the United States in accordance with the Constitution, "Although it may result in certain particulars differently in different States."

The next type of case cited by appellant is that in which fact finding or other administrative functions of a state agency are depended upon by Congress or by the federal government in exercise of a federal power. Such cases are *Butte City Water Co.* v. *Baker*, 196 U. S. 119, *United States* v. *Jones*, 109 U. S. 513 and *Parker* v. *Richard*, 250 U. S. 235. We readily accept this type of decision and state that it does not affect the case at bar. In the type of case cited, the legislative function is completely discharged by Congress. The details of the exercise of that function are supplied by a designated agency in accordance with the principle delineated by Congress. It can readily be seen that the delegation of such details is not unconstitutional merely because Congress has used a state court or a state administrative body for supplying details in a legislative framework erected solely by Congress. The situation in this type of case might be comparable to the case at bar if Congress had, for example, delegated complete power with respect to mining claims on public lands to the state in which said lands were located; or if Congress had provided that upon procla-

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mation of a governor of any state to the effect that the legislature of said state has adequately provided for administration of mining claims on public lands that such function would become entirely vested in the state. Similar situations of mere dependence of the federal government upon state officials in connection with filling in of details are found in the cases cited on pages 23 and 24 of Petitioner's Brief.

The next type of case cited by appellant if that of a federal regulation effective upon a condition. These are cases such as *Currin* v. *Wallace*, 306 U. S. 1; *United States* v. *Rock Royal*, 307 U. S. 533 and *Wickard* v. *Filburn*, 317 U. S. 111. In this type of case, the statute provides that orders of an administrative official (not the statute itself) shall become effective only after approval of such orders in a referendum of those persons who would be affected thereby. Again, the complete lack of an analogy is apparent. In the cited type of case, the order of the administrative official is conditioned upon approval of a majority of the persons affected thereby. In the case of *Currin* v. *Wallace*, 306 U. S. 1, this Court pointed out at page 15 of its Opinion that the referendum did not involve a delegation of legislative authority but only involved the proposition that the regulation would not operate on a given market unless favored by two-thirds of those affected by it. At page 16 of the Opinion this Court pointed out that in such cases Congress exercises the legislative authority and that the result of the referendum is merely one of the conditions upon which the exercise of such authority depends. The referendum decides only the time when the exercise of legislative power by Congress shall become effective.

In the referendum cases, those affected by the Administrative Order are given the right to express their desire,

either to be subject to the order or to be exempt therefrom. No element of fact finding or of the legislative process is involved. This situation is completely different from the case at bar. The statute first makes rent control effective by Congress over the entire country without provision for any condition or referendum. Then, the statute proceeds to vest in governors, state legislatures and governing bodies of cities, towns or villages the right to exercise their discretion in a legislative or fact finding manner, with the applicability of the federal Act to be dependent upon the result of the exercise of this legislative function. In Section 204 (j) of this Act, it should be noted that all of the fact finding and legislative discretion and power is vested in the governor, the legislature or the governing body of the city, town or village. In this section, the Housing Expediter has no discretion of any kind and he must act in accordance with the finding and determination presented to him. The law is clearly worded to the effect that the Housing Expediter "shall" decontrol the area in question. In this regard, the Expediter would be obliged to approve decontrol action taken by other persons in spite of his own conclusion that the need for rent control still existed. Presumably, if the Expediter was of the opinion that need for such control no longer existed, he would decontrol the area in question in accordance with the power vested in him by Section 204 (c). In effect, therefore, Section 204 (j) vests in the governors, legislatures and governing bodies of every city, town or village in the United States the right to override the judgment of the Housing Expediter and to remove their own locality from the operation of a Federal law.

We do not believe that any of the cases cited by appellant in this portion of the argument are in point. We

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have been unable to find any decision of this Court which we regard as being applicable here. We believe that the sweeping provisions of this statute are a new departure in legislative history and that Congress has never before attempted such broad and massive delegation of its legislative power.

Commencing at page 26 of Petitioner's Brief, the point is made that the provisions of Section 204 (j) amount merely to "cooperative adjustments between state and federal governments." It is undoubtedly true that federal and state governments must make cooperative adjustments and that such arrangements and cooperation between the co-existing governments are eminently to be favored. There should be a high degree of cooperation between the federal government and all of its instrumentalities on the one hand and the governing agencies of the several states on the other hand (*Prudential Insurance Co.* v. *Benjamin*, 328 U. S. at page 439). But, we do not think it possible or permissible to argue from so general a premise that the federal government can relinquish to governors, legislatures and governing bodies of cities, towns and villages the right to declare that the area over which they have sovereignty shall be exempt from operation of federal law. In this type of situation, where Congress has admittedly acted under its war power, the only possible method of cooperation between federal and state sovereignties is complete removal of federal regulation from the field and relinquishment of the subject matter to state control. Exercise of sovereign war power by Congress is not a proper field for "cooperation" by state or city governments as provided by this statute.

The arguments set forth in Petitioner's Brief are a very astute attempt to uphold impossible contentions. The

whole argument is based upon complete disregard of two fundamental principles:

1. The war power of Congress is not a proper subject of delegation to the states, to governors or to governing bodies of cities or villages (Constitution Section 8, Article I).

2. The legislative powers reserved to Congress by the Constitution cannot be delegated to the several states (*Wayman* v. *Southard*, 10 Wheat. at page 46).

At page 27 of Petitioner's Brief, another vague and general point is raised to the effect that federal, state and local authorities should act together in order to bring about a gradual and orderly change from emergency controls to peacetime needs. Appellant admits that this vague generality is absolutely without precedent in any of the decisions of this Court. If the need for exercise of the war power by Congress upon a national scale still exists, then Congress should exercise that power in a uniform manner. In such instance, Congress could properly delegate to a federal administrative official the fact finding duty of ascertaining if the need for exercise of the war powers had passed in any particular portion of the country. (*Woods* v. *Miller Co.*, 333 U. S. 138, 144). But, if the need for exercise of war power in uniform fashion by the Congress no longer exists in the judgment of Congress, then Congress should leave the field of regulation entirely to the states. Each state will then act in accordance with its own need for a "gradual and orderly change" as appellant describes on page 27 of its Brief. If the need for federal regulation exists, then Congress should act accordingly and the right of self-elimination from the needed regulation should not be vested in governors, legislatures, or the governing bodies of incorporated cities, town and villages. Such

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complete and wholesale delegation of power is the key to irregularities and disorganization and not to a gradual and orderly change.

At page 27 of Petitioner's Brief, the contention is made that this statute is merely a method chosen by Congress of terminating control under the war powers, therefore it should be held constitutional unless there is no reasonable basis for its exercise. On the contrary, use of power by Congress on the basis of existence of war or war emergency should be scrutinized with care by this Court (Concurring opinion of Mr. Justice Jackson in *Woods* v. *Miller Co.*, 333 U. S. at page 147). If emergency controls are necessary and cannot be terminated without undue injury to the citizens, then by all means such controls should be maintained by Congress. But, if the emergency is of such nature that the controls can be lifted by so many different persons in such diverse situations then indeed there is no emergency and the entire field of control is best left to the several states.

II.

SECTION 209 OF THE HOUSING AND RENT ACT OF 1949 IS AN UNCONSTITUTIONAL DELEGATION OF POWER.

As originally adopted, the Emergency Price Control Act of 1942 (Section 2 (d)) granted the Housing Expediter power to promulgate regulations regarding eviction of tenants under local law. *Bowles* v. *Willingham*, 321 U. S. 503, did not pass upon the validity of this delegation of power and is concerned only with Section 2 (b) of the Emergency Price Control Act of 1942. But by the Housing and Rent Act of 1947, Congress reentered the field of

providing for evictions. This Act prescribed a detailed series of rules governing evictions and set out various situations in which these appellees and other owners of real estate might have sought possession of their property pursuant to Illinois law (Section 209).

Section 209 of the Housing and Rent Act of 1949 provides as follows:

> "Section 209. Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act."

The cases which we consider most pertinent in this portion of the argument have already been referred to (*Panama Refining Co.* v. *Ryan*, 293 U. S. 388 and *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495).

Reference to Section 209 of the Act in question shows that it gives the Expediter no standard whatsoever. To begin with, he may act whenever in his judgment action may be necessary or proper to effectuate the purposes of the Act as he interprets them. Or, if he so desires, he may remain passive. The Expediter is left to exercise his own judgment and interpretation as to the purpose of the Act as intended by Congress. The Expediter is expressly given power to "*regulate or prohibit*" as he sees fit. This power attaches to "speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result

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in rent increases inconsistent with the purposes of this Act". The Expediter may exercise his judgment as to which rent increases are inconsistent with the purposes of the Act and further as to which practices are equivalent to or even likely to result in such inconsistent rent increases. This broad language means that the Expediter is absolute czar over evictions. He has power to curtail all evictions of any kind throughout the effective date of the legislation. He has unlimited power to impose any conditions which he sees fit upon evictions and upon the rights of the parties to this suit to resort to their remedies under the law of the State of Illinois.

It is no answer to say that the factual background of previous legislation or the language of prior statutory enactments gives a sufficiently definite standard for administrative action. Such standard does not exist within the terms of the grant of power and exercise of the delegated power is left entirely to the unrestricted discretion of the Housing Expediter. There are no procedural safeguards of any kind in this section of the Act to furnish protection against exercise of arbitrary power (*United States* v. *Rock Royal*, 307 U. S. at page 576). It is no answer to say that the regulations governing evictions as actually adopted under Section 209 are in fact reasonable, proper and effective. The present Expediter may possibly be succeeded in office by another official whose exercise of discretion may not be held within such reasonable limits. The vice in the statute is the delegation of unlimited power and the possibility of absolute exercise thereof. It is submitted that Section 209 of the Housing and Rent Act of 1949 violates the rights of these appellees as granted by Section 1 of Article I and Paragraph 18 of Section 8 of Article I of the Constitution of the United States.

III.

SECTIONS 204 (j) AND 209 ARE INSEPARABLE FROM THE REMAINDER OF THE ACT AND INVALIDATION OF THE ENTIRE ACT MUST FOLLOW FROM INVALIDATION OF EITHER SECTION 204 (j) OR SECTION 209.

We will open this portion of the argument by making certain concessions as to the effect upon this question of the invalidity of Section 204 (j):

1. We agree that the Housing and Rent Act can operate effectively if Section 204 (j) is stricken as invalid.

2. We agree that this statute contains the usual separability section cited at page 5 of Petitioner's Brief.

3. We agree that this statute, as all others with the separability clause, is to be aided by a presumption of divisibility (*Electric Bond Co.* v. *S. E. C.*, 303 U. S. at page 434).

We clash definitely with appellant in the statement that Congress intended that this statute should be separable and that the statute should remain in effect even without Section 204 (j). Appellant is correct in the statement that the matter is one of ascertaining the intent of Congress (*Electric Bond Co.* v. *S. E. C.*, 303 U. S. 419). The attempted analysis by appellant of the intent of Congress in this instance converts a simple matter into a maze of complications. A mere reference to the statute is sufficient to clarify the entire situation and to prove our point.

The Housing and Rent Act of 1947 authorizes the Housing Expediter to remove controls under certain circumstances (Petitioner's Brief, page 3, Housing and Rent Act of 1947 Section 204 (c), (e)). The opinion of this court

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in the case of *Woods* v. *Miller Co.*, 333 U. S. 138 was handed down on February 16, 1948. Therefore, in discussing the provisions of the Housing and Rent Act of 1949 Congress knew that the device of vesting power to decontrol in the Housing Expediter had been approved by this Court. Had Congress wished rent control to remain in effect with the same provision for decontrol by the Expediter it would have been simplicity itself for Congress merely to extend the operation of the Act, including said provision for decontrol. However, Congress was not satisfied with this provision of the law and extended operation of the Act only upon the addition thereto of added machinery for decontrol as set forth in Section 204 (j). The very fact that Congress added new features and methods of decontrol in addition to those already expressed in the statute shows that Congress wished and intended the statute to be extended *only* with embodiment therein of the new methods of decontrol. This accords with the expressed intention of Congress in the preamble of the Act of 1947 to terminate controls at the earliest practicable date (Petitioner's Brief, pages 33, 34).

The calculations contained in the footnote upon page 35 of Petitioner's Brief are all entirely unnecessary. The majority of the members of Congress evidenced their intention that rent control should be extended only on condition that the new methods of decontrol were available. This intention was clearly evidenced when Congress passed the Bill in a form which included Section 204 (j).

This view of the statute is well set forth in the opinion of the District Court (R. 17). As the District Court stated in its opinion, there is a "conclusive" reason for holding the law indivisible (R. 18):

"Had Congress desired and intended to continue rent control without these local option clauses it could have done so by a simple Act extending the expiration date of the then existing law."

Aside from the irrefutable logic inherent in the situation, we believe that this portion of the argument is governed by the case of *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312. The Opinion in that case points out that the question of separability is a matter of ascertaining the intent of Congress. The presumption in favor of divisibility does not require or authorize this Court to give the statute any effect entirely different from that which would have been desired by Congress. In this case, the Housing and Rent Act of 1949 without Section 204 (j) would be vastly different from the Housing and Rent Act in its present condition.

As to Section 209, the issue of severability should present even less difficulty. We do not concede that the Act can operate effectively without Section 209 and if Sections 209 and 204 are both stricken as invalid, the entire legislation must fall. We do not believe that appellant will contend that Congress intended to control rents until June 30, 1950 without any provision for eviction of any kind under any circumstances. The studied insertion of various provisions for eviction in every rent control Act since 1942 demonstrates the impossibility of such contention.

In this Brief we have not advanced the points discussed in the remaining portion of Petitioner's Brief commencing at page 38 thereof, hence refrain from commenting thereon. Neither do we contend that the case is moot. We agree with Appellant that the issues raised herein should be decided by this Court.

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Conclusion.

We believe that the opinion of the District Court is thoroughly sound and eminently correct. We renew our prayer for affimance of the judgment of the District Court and invalidation of the Housing and Rent Act of 1949.

Respectfully submitted,

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